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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,419	11/01/2000	Eric Cohen	US000287	1395

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EXAMINER

JERABEK, KELLY L

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/703,419

Applicant(s)

COHEN ET AL.

Examiner

Kelly L. Jerabek

Art Unit

2612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,4,6 and 10-15.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: 1) Applicant's arguments (After Final Amendment page 7) state that the Platte reference teaches a television camera having an acceleration apparatus but fails to disclose that the television camera is operatively associated with a hand-held processing device. The Examiner agrees with this assessment however, the Office Action concedes this and provides a 103 rejection including the Saburi reference (which teaches a portable videophone unit) in order to teach this limitation.

2) Applicant's arguments (After Final Amendment page 8) state that the Saburi reference teaches a portable videophone unit but fails to disclose the use of a solely electronic adjusting system for providing a stable image in the presence of movement of a user's hand holding the portable videophone unit. The Examiner agrees with this assessment however, the Office Action concedes this and provides a 103 rejection including the Platte reference (which teaches a solely electronic adjusting system for providing a state image in the presence of movement of a user's hand holding a portable device) in order to teach this limitation.

3) Applicant's arguments (After Final Amendment pages 8-9) state that there would be no motivation for one skilled in the art to combine the Platte and Saburi references. The Examiner respectfully disagrees. Platte discloses in figures 2 and 3 a video camera including an acceleration compensation apparatus. Platte mentions that portable (hand held) cameras have a risk of capturing adversely affected images due to inadvertent acceleration (shake) of the camera housing (col. 1, lines 14-20). It can be seen in figure 1A that the camera produces a video signal of a target (1) and the target (1) is scanned in only a desired field (2) (col. 2, lines 14-27). Therefore, the camera is provided with a wide field of view (1). It can be seen in figure 2 that the camera housing (3) includes acceleration sensors (4,5) capable of continuously detecting relative movement between the camera and on object of interest (col. 2, line 47 - col. 3, line 19). The camera also has the capability of continuously electronically adjusting the camera without the use of a motor in response to the detected relative movement so as to maintain a desired framing and tracking of the object of interest within an image, for providing a stable image in event of an inadvertent acceleration of the camera housing (eg. Movement of a user's hand holding the camera) (col. 2, line 47- col. 4, line 7). Although Platte discloses all of the above limitations he does not distinctly disclose that the camera is capable of being integrated into telephone. Saburi discloses in figures 1-3 a portable videophone unit. The portable videophone unit body (20a) is provided with a camera (22) for taking images (col. 3, lines 32-54). Captured images may then be transmitted to other devices (col. 5, lines 35-48). Therefore, it would have been obvious for one skilled in the art to have been motivated to integrate the camera including an acceleration compensation apparatus disclosed by Platte into hand-held telephone as disclosed by Saburi. Doing so would provide a means for allowing a user to transmit and receive images at a variety of locations (Saburi: col. 1, lines 6-9).

4) Applicant's arguments (Amendment pages 9-10) cite case law (Ex parte Levensgood) and state that it is well known that in order for any prior art references themselves to be validly combined for use in a prior-art 103 rejection, these references themselves must suggest that they be combined. The Examiner respectfully submits that the 103 rejection used in the previous office action includes motivation to combine the references that comes directly from the Saburi reference. Therefore, it would have been obvious for one skilled in the art to have been motivated to integrate the camera including an acceleration compensation apparatus as disclosed by Platte into a hand-held telephone as disclosed by Saburi. Doing so would provide a means for allowing a user to transmit and receive images at a variety of locations (Saburi: col. 1, lines 6-9).

5) Applicant's arguments (Amendment pages 10-11) cite case law (Uniroyal, Inc v. Rudkin-Wiley Corp.; Calmar, Inc. v. Cook Chemical Co.) and state that case law is clear in guarding against the use of hindsight in reading Applicant's invention into the prior art. The Examiner respectfully submits that the 103 rejection used in the previous office action hindsight is not used in reading Applicants invention into the prior art. The 103 rejection includes motivation to combine the references that comes directly from the Saburi reference. Therefore, it would have been obvious for one skilled in the art to have been motivated to integrate the camera including an acceleration compensation apparatus as disclosed by Platte into a hand-held telephone as disclosed by Saburi. Doing so would provide a means for allowing a user to transmit and receive images at a variety of locations (Saburi: col. 1, lines 6-9).

6) Applicant's arguments (Amendment pages 10-11) cite case law (Uniroyal, Inc v. Rudkin-Wiley Corp.; Calmar, Inc. v. Cook Chemical Co.) and state that case law is clear in guarding against the use of hindsight in reading Applicant's invention into the prior art. In further response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).


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PRIMARY EXAMINER